

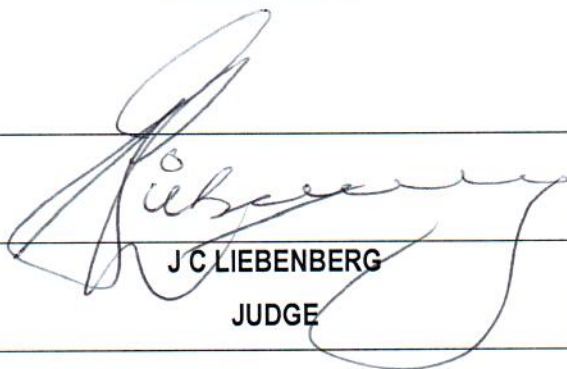
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| Case Title: <i>The State v Stanley Engelbrecht</i> | Case No: CR 99/2019 |
| High Court MD Review No: 607/2018 | Division of Court: Main Division |
| Heard before: Mr Justice Liebenberg <i>et</i> Lady Justice Shivute | Delivered on: 09 December 2019 |
| Neutral citation: <i>S v Engelbrecht</i> (CR 99/2019) [2019] NAHCMD 542 (09 December 2019) | |
| The order: <ol style="list-style-type: none"> The conviction and sentence are set aside. The matter is remitted to the trial court and the magistrate is directed to properly apply the provisions of s 112(1)(b) of the Criminal Procedure Act, Act 51 of 1977 and to thereafter dispose of the matter in accordance with the law. The Magistrate is further directed to sentence the accused with due regard to any period of imprisonment already served by the accused. | |
| Reasons for order: | |
| LIEBENBERG J (concurring SHIVUTE,J) <ol style="list-style-type: none"> This is a review in terms of s 302 (1) of the Criminal Procedure Act (the CPA) as amended. The accused was charged in the magistrate's court for the district of Karasburg with assault with intent to do grievous bodily harm (assault GBH). He pleaded guilty and was questioned in terms of section 112(1)(b) of the Criminal Procedure Act, 51 of 1977 (the Act). After the court's questioning, the accused was sentenced to a fine of N\$2 000 (two thousand dollars) or, in default of payment of the fine, 7 (seven) months' imprisonment. | |

3. A query was then sent to the magistrate to explain as to what satisfied the court *a quo* that the accused had the intention to do grievous bodily harm, because nowhere on the record did it indicate that the accused admitted to having the intention to do grievous bodily harm.
4. The magistrate replied to the query and conceded that the accused did not admit to having the intention to do grievous bodily harm during the court's questioning.
5. Turning to the gravamen of this review it is imperative to state that the elements of assault apply to assault GBH. However, with regards to the latter offence, the intention to do grievous bodily harm is an addition element. Furthermore, Snyman, in *Criminal Law* 6th(ed), states that it is immaterial whether the accused in fact inflicted bodily harm on the complainant, rather what is material is the intention to do grievous bodily harm.¹
6. The purpose of the court's questioning in terms s 112 (1)(b) of the CPA is to ensure that the accused admits to all elements of the particular offence.² In this case, the accused admitted to having assaulted the complainant by hitting her with a stone on her head. However, the accused did not admit to having the intention to do grievous bodily harm as gleaned from the record.
7. Consequently the accused did not admit to all the elements of assault GBH and therefore the conviction and sentence falls to be set aside.
8. It is therefore ordered that:
 - a) The conviction and sentence are set aside.
 - b) The matter is remitted to the trial court and the magistrate is directed to properly apply the provisions of s 112(1)(b) of the Criminal Procedure Act, Act 51 of 1977 and to thereafter dispose of the matter in accordance with the law.

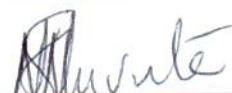
¹ At 435.

² *S v Kanyenge* (CR 49/2018) [2018] NAHCMD 189 (27 June 2018).

- c) The Magistrate is further directed to sentence the accused with due regard to any period of imprisonment already served by the accused.



J C LIEBENBERG
JUDGE



N N SHIVUTE
JUDGE